

RESOLUTION R-2024 -31

**A RESOLUTION APPROVING THE SIGNING OF A WETLAND CREDIT AGREEMENT
WITH MILL CREEK WB, LLC**

WHEREAS, the protection and preservation of wetlands are of paramount importance for environmental sustainability and biodiversity conservation; and

WHEREAS, the City of Wheaton recognizes the value and significance of wetlands in maintaining ecological balance, water quality, flood control, and providing habitat for various species; and

WHEREAS, the City of Wheaton has been presented with a Wetland Credit Agreement (the "Agreement") negotiated between Mill Creek WB, LLC and The City of Wheaton for the purpose of obtaining wetland credits required by the DuPage County Stormwater Ordinance as a part of its permitting for the Gary Avenue Reconstruction Project; and

WHEREAS, the Agreement delineates the terms and conditions under which wetland credits will be provided to the City of Wheaton for use in accordance with applicable laws and regulations governing wetland mitigation; and

WHEREAS, the City of Wheaton has thoroughly reviewed the Agreement and finds it to be in the best interest of the City of Wheaton and aligned with its objectives for environmental conservation and regulatory compliance.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, the Mayor is hereby authorized to sign, and the City Clerk is directed to attest to the Wetland Credit Agreement incorporated herein as Exhibit A.

ADOPTED this 15th day of April, 2024.



Mayor

ATTEST:



City Clerk

Roll Call Vote:

Ayes: Councilman Barbier
Councilwoman Bray-Parker
Councilman Brown
Mayor Suess
Councilman Clousing
Councilwoman Robbins
Councilman Weller

Nays: None
Absent: None
Motion Carried Unanimously

WETLAND CREDIT AGREEMENT

THIS WETLAND CREDIT AGREEMENT (“Agreement”) is made and entered into this 22nd day of March 2024, (the “Effective Date”) by and between Mill Creek WB, LLC, an Illinois limited liability corporation and City of Wheaton (“Purchaser”).

WITNESSETH:

WHEREAS, Purchaser has applied to the U. S. Army Corps of Engineers for a permit under Section 404 of the Clean Water Act, and the DuPage County Stormwater Management (“Permitting Agencies”) for a permit to allow the discharge of clean non-toxic fill material into 0.2345 acres of a wetland within the Gary Ave Project in Wheaton, Illinois (“Project”). Project Number assigned by the USACOE is LRC-2021-095.

WHEREAS, as a condition to the issuance of a permit from the Permitting Agencies Purchaser is required to compensate for said wetland impacts, and elects to do so through the purchase of wetland credits in the Sellers’ Mill Creek Wetland Mitigation Bank (“Wetland Bank”).

WHEREAS, the Permitting Agencies have determined that Purchaser shall be required to purchase a total of 0.3495 acres of certified wetland credit due to the proposed impacts to the wetlands resulting from the development of the Project.

WHEREAS, the Project is located in the Des Plaines River watershed and the Wetland Bank is also located in the same watershed, in Lake County, Illinois.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, it is agreed as follows:

- 1) RECITALS: The recitals are hereby incorporated by this reference.
- a.) COMPENSATION: Purchaser shall, subject to the terms and conditions hereinafter provided, pay to the Seller the sum of SIXTY-TWO THOUSAND NINE HUNDRED AND TEN DOLLARS (\$62,910 = “Purchase Price”) for 0.3495 certified wetland credits from the Wetland Bank. The Purchase Price is derived from the unit cost of \$180,000 per wetland credit/acre. Purchase Price shall be paid in the following manner:
- b) EARNEST MONEY: Upon signing this Agreement Purchaser shall pay Seller a non-refundable deposit of 10% of the Purchase Price, or \$6,291, as Earnest Money.
- c) BALANCE OF PURCHASE PRICE: Upon receipt of the final approval notice for the Project (“Permit Approval Notification”), Purchaser shall pay Seller the remaining 90% of the Purchase Price as stated herein, or \$56,619. Payments shall be made to Mill Creek WB, LLC. If the balance of the Purchase Price is not paid by the end of the fifth business day after receiving the Permit Approval Notification the balance of the Purchase Price will accrue interest at the rate of ten percent (10%) per annum. Upon payment of Purchase Price Seller shall notify Permitting Agencies that 0.3495 acres of certified wetland credit have been secured from the Wetland Bank.
- d) TERMINATION: If, after one hundred and twenty (120) days after the Effective Date, Purchaser has not received the Project Permit, then at any time thereafter until Purchaser receives the Project Permit either party may

terminate this Agreement by written notice to the other party and the parties shall have no further obligations hereunder.

2) SELLERS PERFORMANCE INDEMNITY: In consideration of Payment of the Purchase Price, Seller affirms that it has sufficient wetland credits released by the Permitting Agencies in the Wetland Bank to satisfy the wetland credits required by Purchaser and hereby does sell such credits to Purchaser. Purchaser shall have no obligation to perform any of the responsibilities or assume any liabilities of Seller now or hereafter as set forth by the Permitting Agencies in the development and maintenance of the Wetland Bank.

3) NOTICES: Any notices required or permitted hereunder shall be sufficiently given if delivered by overnight courier, by United States mail, return receipt requested, or by facsimile to the parties hereto as follows:

If to Seller: Mill Creek WB, LLC
C/o Land and Water Resources, Inc.
9575 West Higgins Road, Suite 801
Rosemont, IL 60018
Attn: Mr. John H. Ryan
Phone: 847-692-7170
Fax: 847-9939-5214
Email: jryan@lawrinc.com

If to Purchaser: City of Wheaton
303 West Wesley Street
Wheaton, Illinois 60187
Attn: Sarang Lavankar
Phone: 630-260-2067
Email: slagvankar@wheaton.il.us

Any notice given pursuant hereto by overnight courier shall be effective as of delivery; any notice given pursuant hereto by United States mail, return receipt requested, shall be

effective as of the third business day following its posting and any notice given pursuant hereto by facsimile shall be effective as of receipt of confirmation by the sending party.

4) PRIOR AGREEMENTS: This Agreement shall supersede any and all prior understanding and agreements between the parties hereto, whether written or oral, with respect to the subject matter hereof and may be amended only by a written instrument executed by or on behalf of both Seller and Purchaser.

5) APPLICABLE LAW: Seller and Purchaser shall be contractually bound to this Agreement, which shall be governed by the laws of the state of Illinois and subject to the requirements of any applicable federal law or regulation. Changes in federal, state or local laws, which might have otherwise impacted this Agreement shall not be enforced retroactively after execution of this Agreement. Each party shall be held harmless for damages sustained by the other party as a result of changes in federal, state or local laws or their interpretation or enforcement.

6) SUCCESSORS AND ASSIGNS: This Agreement shall inure to the benefit of and be binding upon the successors and assigns of Seller and Purchaser, as the case may be, and their respective successors and assigns. Neither party hereto shall assign any interest hereunder without the prior written approval of the other first hand.

7) CONTRACT ACCEPTANCE: This Agreement is null and void if not executed within thirty (30) days of the effective date on first draft of Agreement, or date first draft of Agreement was sent to Purchaser. This time limitation shall be extended only upon written approval by all parties to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

City of Wheaton:

By: Philip J. Suen 4/14/24
MAYOR

SELLER:

Mill Creek WB, LLC

By: John H. Ryan
John H. Ryan, Managing Member